

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5920 of 1999

to

FIRST APPEALNo 5960 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL BALCHANDDAS PITAMBARDAS

Appearance:

Mr.Vipul Pancholi, AGP, for appellant in F.A.

Nos.5920 of 1999 to 5950 of 1999

Mrs. Hansa Punani, AGP, for the appellant in F.A.

Nos.5951 of 1999 to 5960 of 1999

MR AMIT C NANAVATI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 10/08/2000

COMMON JUDGEMENT (PER : M.H.KADRI, J)

1. Appellants, in this group of appeals, which are
filed under Section 54 of the Land Acquisition Act, 1894
(to be referred to as the "Act" for short) read with

Sec.96 of the Code of Civil Procedure, have challenged common judgment and award dated July 30, 1998, passed by the learned Assistant Judge, Mehsana, in Land Reference Cases Nos. 932/92 to 965/92, 1838/93, 1839/93, 1845/93, 1856/93, 1860/93, 1865/93 and 1866/93. As common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

2. Agricultural lands of the respondents situated at town Unjha were placed under acquisition for public purpose of Dharoi Canal Project, Visnagar, by issuance of notification under Section 4(1) of the Act published in the Government Gazette on October 19, 1989. After following usual procedure under the Act, declaration under Section 6 of the Act which was published in the official gazette on October 23, 1990. The respondents, who were owners of acquired lands, were served with notices under Section 9(3)(4) of the Act. The respondents appeared before the Land Acquisition Officer and claimed compensation of acquired lands at the rate of Rs.200/- per sq. meter. The Land Acquisition Officer, on the basis of materials placed before him, made his award on July 31, 1991, and offered compensation of acquired lands at the rate of Rs.3.50 per sq.mtr.

3. The respondents feeling dissatisfied with compensation offered by the Land Acquisition Officer submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court, Mehsana, for determination of adequate compensation. Accordingly, references were made to the District Court, Mehsana, which were numbered as Land Reference Cases Nos. 932/92 to 965/92, 1838/93, 1839/93, 1845/93, 1856/93, 1860/93, 1865/93 and 1866/93. The Reference Court consolidated all the reference cases and Land Reference Case No.952 of 1992 was treated as main reference, where, the parties had led common evidence.

3. Before the Reference Court, the respondents had claimed compensation at the rate of Rs.200/- per sq.mtr., inter alia, contending that, because of acquisition of their agricultural lands, remaining lands had become uncultivable and the respondents had suffered heavy damages, for which, they should be compensated. It was claimed that acquired lands were having high fertility and potential value, and town Unjha was having facilities of railway, national highway, cooperative societies, transport companies, branches of several nationalized banks and there was biggest market yard of Asia Continent

in town Unjha.

4. The reference applications were contested by the appellants by filing their reply, inter alia, contending that the Land Acquisition Officer had taken into consideration all the material facts, situation and fertility of lands acquired and had offered just and adequate compensation for acquired lands to the respondents, and, therefore, the applications be dismissed with costs.

5. On rival assertions of the parties, the Reference Court framed common issues in Land Reference Case No.952 of 1992. To substantiate their claim of enhanced compensation, the respondents examined Balchandhai Pitambardas Patel at Exh.10, who was claimant of Land Acquisition Reference No.952 of 1992. The witness deposed that agriculturists were raising different types of crops on their agricultural lands and were getting annual yield of Rs.50,000/- per bigha. The witness further deposed that town Unjha was having facilities of electricity, water supply, schools, colleges, technical institutions, government offices, hospitals, etc. He further deposed that acquired agricultural lands were situated on the outskirts of town Unjha and were having potential value as many industrial development had taken place near acquired lands. The witness further deposed that Town Planning Scheme was also made applicable to town Unjha and, therefore, potential value of acquired lands was very high. The witness, during his deposition, produced copy of judgment and award rendered in Land Acquisition Reference No.19 of 1984 to 32 of 1984, decided March 23, 1992, at Exh.11, wherein, for acquired lands of town Unjha, compensation was awarded by the Reference Court ranging between Rs.55/- to Rs.135 per sq.mtr., wherein, notification under Section 4(1) of the Act was published in the Government Gazette on June 11, 1981. The witness further produced copy of judgment delivered in Land Acquisition Reference No.234 of 1990 to 251 of 1990, decided on February 23, 1995, at Exh.12, wherein the Reference Court determined compensation at Rs.105 per sq.mtr for acquired lands of town Unjha, wherein, notification under Section 4(1) of the Act was published in the Government Gazette on June 11, 1981. The witness also produced copy of judgment and award rendered in Land Reference Cases Nos. 26/82, 27/82 and 28/82, decided on January 22, 1985, at Exh.13, wherein, the Reference Court had awarded compensation for acquired lands of town Unjha at Rs.24/- per sq.mtr. wherein, notification of Section 4(1) of the Act was issued on March 12, 1981. Previous award rendered in Land

Acquisition Cases Nos. 91 of 1991 to 104 of 1991 decided on August 11, 1997, was produced at Exh.14, wherein, the Reference Court had determined market value of acquired lands of town Unjha at the rate of Rs.40/per sq.mtr wherein notification of Section 4(1) of the Act was published in the Government Gazette on January 18, 1989. Copy of previous award Exh.15 rendered in Land Acquisition Reference No.80 of 1991 to 90 of 1991, decided on July 25, 1991, was produced at Exh.15, wherein, the Reference Court had determined market value of acquired lands of town Unjha at the rate of Rs.40/per sq.mtr wherein notification of Section 4(1) of the Act was published in the Government Gazette on January 19, 1989. The witness produced map at Mark 9/1 to show location of present acquired lands and previously acquired lands of town Unjha.

6. The claimants had also examined Patel Chaturbhai Ishwarlal at Exh.16, who was Trustee of Vaidhnath Mahadev Trust of the same town. Said witness produced xerox copy of sale deed dated July 13, 1988, at Exh.17, which was with regard to land admeasuring 2170 sq.ft of Survey No.3337/1 situated in town Unjha, which was purchased by the Trust at the rate of Rs.37.94 ps per sq.yard.

7. The claimants had also examined Ramabhai Ganeshbhai Rabari at Exh.19 to prove sale deed exh.20 which was in respect of sale of land bearing Survey No.48/1 admeasuring 100 sq.mtrs, at Rs.100/- per sq.mtr as on May 1, 1982.

8. The appellants examined Virabhai Manjibhai Rana at Exh.24, who was serving as Deputy Mamlatdar in the Office of Land Acquisition Officer, Palanpur. The witness deposed that the Land Acquisition Officer, while making award, had considered sale transaction of town Unjha and, thereafter, had offered compensation of acquired lands at the rate of Rs.3.50 ps per sq.mtr. He further deposed that the previous awards relied upon by the claimants were challenged in the High Court and, therefore, the previous awards had not become final. The appellants did not produce any documentary evidence and closed their evidence by purshis Exh.25.

9. The Reference Court, for the purpose of determination of market value of present acquired lands, situated at town Unjha, had mainly relied upon previous award Exh.14 rendered in Land Acquisition Reference Nos.91 of 1991 to 104 of 1991, wherein, the Reference Court had determined market value of acquired lands of same town as on January 18, 1989 at the rate of Rs.40/per

sq.mtr. By relying upon the said award Exh.14, the Reference Court had determined market value of present acquired lands of same town Unjha as on October 18, 1989 at the rate of Rs.40/- per sq.mtr. less awarded by the Land Acquisition Officer at the rate of Rs.3.50 per sq.mtr. which has given rise to filing of the present appeals by the appellants.

10. We have heard Mr. V.M. Pancholi, learned Assistant Government Pleader appearing for the appellant, and learned counsel Mr.A.C.Nanavati for the respondents at length. We have also taken into consideration relevant documents as well as oral evidence produced on record before the Reference Court.

11. Mr. V.M. Pancholi, learned Assistant Government Pleader appearing for the appellant, has vehemently submitted that previous award Exh.14 was not relevant and comparable for the purpose of determination of market value of present acquired lands. Learned counsel for the appellant further submitted that present acquired lands and acquired lands of award Exh.14 were not situated in the same locality and, therefore, the Reference Court had erred in awarding compensation of present acquired lands at the rate of Rs.40/- per sq.mtr. Learned counsel for the appellant further submitted that determination of market value of present acquired lands by the Reference Court was based on no evidence and, therefore, the appeals deserve to be allowed.

12. Submissions made by Mr. V.M. Pancholi, learned Assistant Government Pleader appearing for the appellant, in our opinion, do not deserve any merit and require to be rejected. The claimants' witnesses led sufficient evidence with regard to fertility and potentiality of acquired lands. Town Unjha was fast developing town wherein biggest market yard of Asia Continent was situated. There was very fast development of building as well as industrial activities in town Unjha. The claimants also led sufficient evidence to establish that they were raising different types of crops on their agricultural lands and were getting annual yield of Rs.50,000/-. The claimants had also produced sale deeds of lands of same town, wherein, market price reflected was Rs.37 to Rs.94 per sq.yard, in 1988. In our opinion, the claimants had led sufficient evidence to prove that they were entitled to enhanced compensation.

13 It is settled principle that one of the modes for determination of market value of acquired lands is to rely upon previous award of the Reference Court or the

High Court, if the lands of previous award and subsequently acquired lands were comparable in situation and fertility and both notifications were issued in near proximity of time. Notification of previous award Exh.14 was published on January 18, 1989 whereas notification of present acquired lands was published after nine months, i.e. on October 19, 1989. The claimants had led sufficient evidence to prove that lands of previous award Exh.14 and present acquired lands were in all respects relevant and comparable and having similar advantageous features. The Reference Court, by relying upon previous award Exh.14, had determined market value of lands acquired by notification dated January 18, 1989 at the rate of Rs.40/- per sq.mtr. Though present agricultural lands were acquired after nine months, yet the Reference Court had not given any rise in price while relying upon previous award Exh.14 for the purpose of determination of market price of present acquired lands. Therefore, determination of present acquired lands at the rate of Rs.40/- per sq.mtr as on October 19, 1989 cannot be called excessive. It may be stated that previous award Exh.14 was challenged in the High Court in First Appeals Nos.4702 of 1997 to 4715 of 1997 and the Division Bench of this Court (Coram; Y.B.Bhatt & R.P.Dholakia,JJ.) by judgment and order dated June 38, 1998, had confirmed determination of market value of acquired lands of town Unjha at the rate of Rs.40/- per sq.mtr. Therefore, award Exh.14 had become final and the Reference Court had not committed any error in placing reliance on previous award Exh.14 for the purpose of determination of market value of present acquired lands. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. The benefits extended to the respondents under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and do not call for any interference in these appeals. However, the claimants would not be entitled to solatium on the 12% interest awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharaun Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

14. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

(M.H.Kadri, J.)

(D.P. Buch, J.)

(swamy)